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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,454	02/10/2004	John W. Machlica	88062.000006	9408
23387	7590	03/17/2006		
Stephen B. Salai, Esq. Harter, Secrest & Emery LLP 1600 Bausch & Lomb Place Rochester, NY 14604-2711			EXAMINER WELCH, GARY L	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/775,454

Applicant(s)

MACHLICA, JOHN W.

Examiner

Gary L. Welch

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 22-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 February 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>05102004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-21, drawn to a garment hanger having a hook, a pair of depending garment engaging arms, a transverse strut and a polymeric sheath extending along at least one arm, classified in class 223, subclass 98.
 - II. Claims 22-26, drawn to a garment hanger having a hook, a transverse strut, a pair of garment engaging arms defining a continuously convex profile between the hook and the strut, classified in class 223, subclass 85.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination I has separate utility such as preventing damage and wrinkles to the garments from the frame while being displayed on the hanger and can be retrofitted to existing coat hangers and subcombination II has separate utility such as locating the center of mass of the garment and effectively supporting that portion so as to avoid draping which could cause deformation or puckering of the garment. See MPEP § 806.05(d).

3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

4. Because these inventions are independent or distinct for the reasons given above and the inventions require a different field of search (see MPEP § 808.02), restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Mr. Brian Shaw on 14 March 2006 a provisional election was made with traverse to prosecute the invention of Group I, claims 1-21. Affirmation of this election must be made by applicant in replying to this Office action. Claims 22-26 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

6. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-9 and 11-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Bevelander (U.S. 4,632,287).

Bevelander discloses a garment hanger 12 having a frame, a hook 18 and a pair of depending garment engaging arms 16 and a transverse strut 14 extending between the garment engaging arms 16. A polymeric sheath 24 extends along at least one of the garment engaging arms 16.

With regard to claim 2, the polymeric sheath 24 extends along both garment engaging arms 16 (Figure 1).

With regard to claim 3, the polymeric sheath 24 encapsulates a length of one of the garment engaging arms 16.

With regard to claim 4, the polymeric sheath 24 is concentric with one of the garment engaging arms 16 since the sheath surrounds the frame of the hanger (Figure 2).

With regard to claim 5, the polymeric sheath 24 is eccentric with one of the garment engaging arms. The sheath does not extend completely around the entire arm 16.

With regard to claim 6, the polymeric sheath 24 is fabricated from plastic and has a cellular structure.

With regard to claim 7, the polymeric sheath 24 is molded from a plastic material. Additionally, the recitation "is an overmolding" does not provide any structure that further limits the claim nor any structure that defines over the prior art.

With regard to claim 8, the polymeric sheath 24 is a separable sleeve (Col. 3, lines 38-42).

With regard to claim 9, the separable sleeve includes a longitudinally extending slit (Figure 2) for receiving the cross-section of the garment engaging arm 16.

With regard to claim 11, the polymeric sheath 24 has an outer diameter at least twice a diameter of the garment engaging arm 16 (Figure 4).

With regard to claims 12-14, the method steps are disclosed in the above rejections to the apparatus claims since all the structural limitations are disclosed by Bevelander. There is no unique method steps claimed that defines over the molded polymeric sheath and garment hanger of Bevelander.

With regard to claim 15, the polymeric sheath 24 is an overchannel having a generally U-shape cross-section defined by a closed end and a pair of legs and a channel longitudinal axis. The closed end includes an aperture sized to pass the hook therethrough. The channel longitudinal axis is different than the longitudinal axis of the garment engaging arm.

With regard to claim 16, the overchannel is a one-piece body.

With regard to claim 17, the overchannel includes a first layer defining a first leg and a second layer defining the second leg. The recitation "the first layer and the second layer bonded together to form the closed end" is considered a product by process limitation. Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process." *In re Thorpe*, 777 F.2d 695, 698, 227 USPQ 964, 966 (Fed. Cir. 1985).

With regard to claims 18, 20 and 21, the inner surface of at least one of the legs includes a capture tab (27, 29) sized to retain a section of the garment engaging arm 16 intermediate the capture tab (27, 29) and the closed end (Figure 2).

With regard to claim 19, the overchannel is an integral one piece construction and is sized to extend beyond a terminal end of each engaging arm (Figures 1 and 4).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bevelander (U.S. 4,632,287) in view of Hill (U.S. 4,040,545).

Bevelander discloses the invention substantially as claimed above.

However, Bevelander does not disclose a second polymeric sheath extending along the hook.

Hill teaches a garment hanger 10 having a hook 11 wherein the hook is provided with a polymeric sheath 12 extending therealong so as to protect a person from injury to the hand while the person is holding and/or carrying attached clothing.

It would have been obvious to one of ordinary skill in the art at the time the invention was known to provide a protective sheath as taught by Hill along the hook of the garment hanger of Bevelander so as to protect a person from injury to the hand while the person is holding and/or carrying attached clothing.

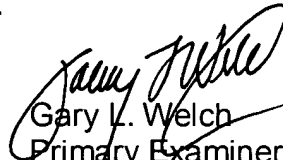
Conclusion

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Murray '620, Gish '049, Cameron et al. '413, Michalik '694, McHugh '482, Rice '516, Florian '810 and Moen et al. '436 disclose various garment hangers having a polymeric sheath.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary L. Welch whose telephone number is (571) 272-4996. The examiner can normally be reached on Mon-Fri 5:30-3:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (571) 272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gary L. Welch
Primary Examiner
Art Unit 3765

glw